

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

Tobie Melissa Kirkland

2008 APR 18 A 9:45

v.

DEBRA P. HACKETT
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

United States of America

Case No: 2:03-CR-264-MHT
Civil Action: 2:07-CV-759-MHT

RESPONSES TO KEVIN BUTLER'S
SWORN AFFIDAVIT

COMES NOW, Tobie Kirkland, pro se, response to affidavit of Kevin Butler (document 9 filed 02/25/2008.)

The was notified that, Kirkland, was ordered to received a response from Mr. Kevin Butler within 20 days a certified copy to mailed to Kirkland. After Kirkland requested the disposition from the court (Exhibit A3) .

I, Tobie Kirkland rebuttal the following;

Rebuttal 2. Mr. Butler could not have reviewed the court docket sheet
U.S. v. Tobie M. Kirkland, 2:03-CR-264-MHT-DHB

Rebuttal 3. Ms. Kirkland states that her state judge Turman Hobbs, Jr.
did run her federal and state sentence concurrent.
(Exhibit A4)

Rebuttal 6. Mr. Durant did argue successfully to have Kirkland's
state sentence ran concurrently with Federal sentence.

Rebuttal 7. Kirkland is simply relating to counsel's representation at
her federal sentencing hearing, which is in the court's
jurisdiction to determine Kirkland's representation was
ineffective.

Done this 13th Day of April, 2008.

Respectfully Submitted, .

Tobie M. Kirkland

Tobie M. Kirkland
501 Capital Circle
Tallahassee, Florida 32301

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the ~~Honorable Judge~~
~~Myron Thompson~~ by mailing to:

Response to Kevin Butler
Rebuttal to Motion 2255
Extension to Motion 2255

Office of the Clerk
United States District Court
One Church Street
Montgomery, Alabama 36104

13th day of April, 2008

Respectfully Submitted,



Tobie M. Kirkland

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the by mailing to:

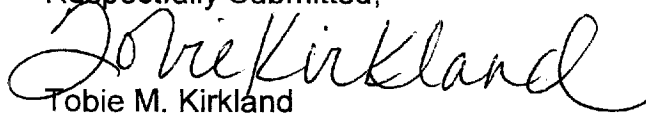
Response to Kevin Butler
Rebuttal to Motion. 2255
Extension to Motion

Done this 13th Day of April, 2008.

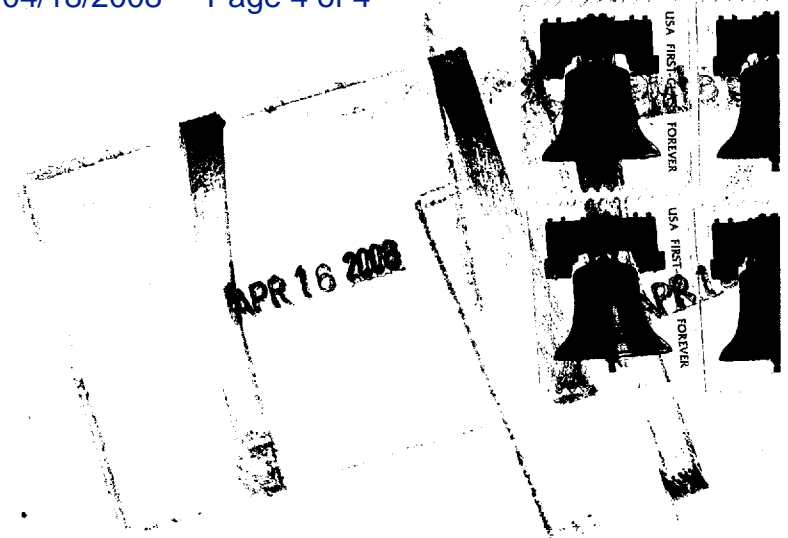
to:

Laura Canary
Asst. U.S. Attorney

Respectfully Submitted,


Tobie M. Kirkland

Jobie
Federal Court
501 Capital Circle
Tallahassee, Fl. 32301



Office of the Court Cle
U.S. District Court
One Church Street
P.O. Box 711
Montgomery, Al. 36101-0

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

Tobie Melissa Kirkland

Case No. 2:07CV759-MHT

v.

United States

NOTICE OF DISPOSITION OF RESPONSE FROM
MR. KEVIN BUTLER, ATTORNEY TO MOTION 2255

COMES NOW, Tobie Melissa Kirkland, pro se, humbly asking the court the disposition of the response from Mr. Kevin Butler, Attorney to the Honorable Court. The response was due to the Honorable court 20 days. To date, Tobie Melissa Kirkland, pro se, has not received a certified copy of the response ordered.

Done this 4th Day of April, 2008.

Respectfully Submitted,



Tobie Melissa Kirkland
11338-002
501 Capital Circle
Tallahassee, Florida 32301

Exhibit A3

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

TOBIE MELISSA KIRKLAND) CIVIL ACTION NO. 2:07cv759-MHT
) (CR. NO. 2:03-CR-264-MHT-DRB)
)
v.)
)
)
UNITED STATES OF AMERICA)

AFFIDAVIT

STATE OF ALABAMA)
)
COUNTY OF MONTGOMERY)

I, KEVIN L. BUTLER, state the following:

1. I am an attorney admitted to practice law in Arizona, the Eastern District of California, the District of Nevada, the Middle District of Alabama, the United States Court of Appeals for the Ninth Circuit, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. I have been employed as an Assistant Federal Public Defender for over 15 years and in the Middle District of Alabama since November 19, 1998.
2. In order to prepare this affidavit, I have reviewed: (a) the Federal Public Defender's office file in United States v. Tobie M. Kirkland, 2:03-CR-264-MHT-DHB; (b) my time records prepared in this matter; (c) the Court docket sheet in United States v. Tobie M. Kirkland, 2:03-CR-264-MHT-DHB and (d) Ms. Kirkland's Habeas Petition filed pursuant to 28 U.S.C. § 2255 (Docket #1). Details not provided by my review of the case file and pleadings are based upon my best recollection.

Exhibit A3

3. Ms. Kirkland asserts that my representation was ineffective because I failed to convince the Alabama state court to run her sentence concurrently with the sentence impose in United States v. Tobie M. Kirkland, 2:03-CR-264-MHT-DHB.
4. Undersigned counsel represented Ms. Kirkland in this Court United States v. Tobie M. Kirkland, 2:03-CR-264-MHT-DHB. On or about July 26, 2006, Ms. Kirkland's probationary sentence was revoked based upon the Court's determination she had broken Alabama state law while on probation. She received a sentence of twenty-four months in the custody of the Federal Bureau of Prisons. Prior to execution of this sentence, she was then returned to Alabama state custody to answer to the state charges for which her federal probation was revoked.
5. Ms. Kirkland was represented on these state charges by Winston D. Durant, Esq., 445 South McDonough Street, Montgomery, Alabama.
6. Prior to being convicted and sentenced in state court, undersigned counsel advised Mr. Durant and the Alabama state judge, Truman Hobbs, of the federal sentence. Mr. Durant then argued unsuccessfully to have Ms. Kirkland's Alabama state sentence run concurrently with her federal sentence.
7. Undersigned counsel simply did not represent Ms. Kirkland in state court and, therefore, my representation during these proceedings could not be ineffective. Additionally, undersigned counsel does not believe this Court has jurisdiction to determine whether Ms. Kirkland's state counsel's representation was ineffective in state court.

Dated this 25th day of February 2007.


Exhibit A3

Respectfully submitted,



KEVIN L. BUTLER
First Assistant Federal Defender
201 Monroe Street, Suite 407
Montgomery, Alabama 36104
Phone: (334) 834-2099
Fax: (334) 834-0353
E-mail: kevin_butler@fd.org
AZ Bar Code: 014138

Sworn and subscribed to before me this 25th day of February, 2008.



NOTARY PUBLIC
My Commission expires: 11/6/11

Exhibit A3

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TOBIE MELISSA KIRKLAND)	CIVIL ACTION NO. 2:07cv759-MHT
)	(CR. NO. 2:03-CR-264-MHT-DRB)
)	
v.)	
)	
)	
UNITED STATES OF AMERICA)	

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Stephen P. Feaga, Esquire
Assistant United States Attorney

Respectfully submitted,

s/ Kevin L. Butler
KEVIN L. BUTLER
First Assistant Federal Defender
201 Monroe Street, Suite 407
Montgomery, Alabama 36104
Phone: (334) 834-2099
Fax: (334) 834-0353
E-mail: kevin_butler@fd.org
AZ Bar Code: 014138

Exhibit A3